

WATER/JPT/MXK/EYC/jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**WATER DIVISION
Water Branch**

**RESOLUTION W-4570
November 18, 2005**

R E S O L U T I O N

**(RES. W- 4570), YOSEMITE SPRING PARK UTILITY COMPANY
(YSPUC). ORDER DIRECTING THE COLLECTION OF FACILITIES
FEES FROM CUSTOMERS WHO APPLIED FOR WATER SERVICE
ON OR AFTER APRIL 6, 2004.**

SUMMARY

This resolution directs YSPUC to collect facilities fees from customers who applied for water service on or after April 6, 2004 in accordance with Tariff Schedule F, Facilities Fees authorized by Resolution (Res.) W-4463.

BACKGROUND

By Advice Letter 26 received on June 27, 2005, YSPUC requests authority under Section II of General Order 96-A and Section 532 of the Public Utilities Code to deviate from the established Tariff Schedule F and provide waivers from paying the facilities fees to customers who received building permits from the County before May 1, 2004. The fees are used to establish a fund to install and repair plant, and to fund new facilities. YSPUC serves 1,590 customers in the unincorporated community of Yosemite Lakes Park, approximately five miles south of Coarsegold, Madera County.

NOTICE

Notice of the facilities fees implementation was sent to affected customers on June 22, 2005. Since not all of the customers received the notice, the Water Branch directed YSPUC by letter dated August 1, 2005 to mail a copy of the advice letter to all utility customers. On August 17, 2005, YSPUC mailed a copy of the advice letter to all utility customers.

PROTESTS

Five protests were received by the Commission. All protests were in favor of implementing the facilities fees for new customer requesting connection after April 1, 2004. Some customers indicated that the customers who were exempted from paying the facilities fees were subjected to special favor.

DISCUSSION

Res. W-4463, dated March 16, 2004, granted YSPUC authority to incorporate a facilities fee into its filed tariffs for the construction of water mains, wells, and other infrastructure replacements and improvements. The then-sitting YSPUC's Board of Directors delayed the implementation of the new Schedule F- Facilities Fees, effective April 6, 2004, for thirty days (until April 30, 2004) in order to accommodate property owners who had begun the building permit process, but whose building permits were delayed due to work overload in Madera County. In other words, owners who had receipts for building permits prior to May 1, 2004, would not be subject to the new facilities fee.

Section 532 of the Public Utilities Code prohibits public utilities from charging or receiving different compensation, for any commodity furnished, other than at the rates and charges applicable thereto as specified in its schedule on file and in effect at the time. Section 532 states:

“Except as in this article otherwise provided, no public utility shall charge or receive a different compensation for any product or commodity furnished or to be furnished, or for any specific rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedule on file and in effect at the time, nor shall any public utility engaged in furnishing or rendering more than one product, commodity or service charge, demand, collect, or receive a different compensation for the collective, combined, or contemporaneous furnishing or rendition of two or more of such products, commodities, or services, than the aggregate of the rates, tolls, rentals, or charges specified in its schedules and in effect at the time, applicable to each such product, commodity, or service when separately furnished or rendered, nor shall any public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons. The commission may by rule or order establish such exceptions

from the operation of this prohibition as it may consider just and reasonable as to each public utility.”

YSPUC provided a list of 54 customers who may have been affected by the Facilities Fees waiver. Water Division (Division) requested a copy of the application for water service for each of the 54 customers. After reviewing the application, Division determined that 5 customers who had applied on or after April 6, 2004 paid the facilities fees, 28 customers who applied on or after April 6, 2004 did not pay the facilities fees, and 21 customers who applied before April 6, 2004 are exempt from facilities fees.

YSPUC’s tariff Schedule F – Facilities Fees went into effect on April 6, 2004. Since April 6, 2004, the facilities fees for 28 customers have been waived without Commission authorization. The YSPUC’s Board of Directors does not have legal authority to delay the effective date of Commission tariff schedules. Division recommends that YSPUC be directed to bill the exempted customers who applied on or after April 6, 2004 within 30 days of the effective date of this resolution. The affected customers are those who applied for water service on or after April 6, 2004, and have not yet paid the applicable facilities fees.

These fees are applicable to new customers requesting service to premises not previously served and to additional and increased sized connections to presently-served premises and would be in addition to charges for any main extension or connection fee that may also be required under Rule 15 of the utilities’ tariffs. Also, the authorized facilities fees would not limit the amount requested under Rule 15 for special facilities that may be required to serve developers. YSPUC must treat the facilities fees as Contributions-in-Aid-of-Construction and follow the requirements as specified in the Internal Revenue Code Section 118 to qualify as such. Accordingly, these amounts will be a long term reduction in rate base for rate-making purposes.

To provide accountability of the funds, any utility filing to implement the authorized facilities fees is required to place the funds in an interest-bearing account and to show the balances in its annual report to the Commission. YSPUC shall account for the facilities fees as specified by the Commission’s prescribed Uniform System of Accounts. In addition, YSPUC shall maintain detailed supporting records to identify the amount received, plant expenditure, interest income, and the remaining fund balance.

COMMENTS

Public Utilities Code §311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Code §311(g)(2) provides that this 30-day period may be waived or reduced upon stipulation of all parties in the proceeding.

The 30-day comment period for the draft resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from the date of mailing of this resolution to the parties.

FINDINGS

1. Resolution W-4463, dated March 16, 2004, granted YSPUC authority to incorporate a facilities fee into its filed tariffs for the construction of water mains, wells, and other infrastructure replacements and improvements.
2. YSPUC's tariff Schedule F - Facilities Fees went into effect on April 6, 2004.
3. YSPUC's Board of Directors delayed the implementation of the new Schedule F - Facilities Fees until April 30, 2004 and waived the fees for some affected customers.
4. YSPUC provided a list of 54 customers who may have been affected by the Facilities Fees waiver. The affected customers are those who applied for water service on or after April 6, 2004, and have not yet paid the applicable facilities fees.
5. After reviewing the applications, Division determined that 5 customers who had applied on or after April 6, 2004 paid the facilities fees, 28 customers who applied on or after April 6, 2004 did not pay the facilities fees, and 21 customers who applied before April 6, 2004 are exempt from facilities fees.
6. Section 532 of the Public Utilities Code prohibits public utilities from charging or receiving different compensation, for any commodity furnished, other than at the rates and charges applicable thereto.
7. The Commission finds, after investigation by the Division, that the request of Yosemite Spring Park Utility Company to deviate from its Established Facilities Fees is rejected based on Section 532 of the Public Utilities Code and therefore the exempted customers must be billed for the facilities fees.

THEREFORE IT IS ORDERED THAT:

1. Yosemite Spring Park Utility Company's Advice Letter No. 26 is rejected based on Section 532 of the Public Utilities Code and the exempted customers must be billed for the facilities fees.
2. Yosemite Spring Park Utility Company is directed to bill customers who applied on or after April 6, 2004 within 30 days from the effective date of this resolution. The affected customers are those who applied for water service on or after April 6, 2004 and have not yet paid the applicable facilities fees.
3. Yosemite Spring Park Utility Company after billing the facilities fees shall deposit

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within five days of receipt any such fees collected in a separate bank account paying interest. A direct confirmation from the bank shall be mailed to the Director of the Water Division after making such deposit to verify the amount deposited as authorized in Special Condition 3 in Schedule F.

4. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 18, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners